

ORIGINAL

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

(12)  
8-20-01  
SC

YONNIE BAILEY,

Petitioner

v.

JAKE MENDEZ,

Respondent

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No. 1:CV-00-2184  
(Judge Caldwell)

FILED  
HARRISBURG, PA

AUG 17 2001

MARY E. D'ANDREA, CLE  
Per Deputy Clerk

ANSWER OF THE PENNSYLVANIA BOARD OF  
PROBATION AND PAROLE TO PETITION  
FOR WRIT OF HABEAS CORPUS

The Pennsylvania Board of Probation and Parole (hereinafter the "Board"), by and through their attorney, the Attorney General of Pennsylvania, answers the writ of habeas corpus as follows:

A seriatim response is being dispensed with in the interest of clarity.

I. The Petition Fails To State A Cause of Action

1. Petitioner is Yonnie Bailey, an inmate at FCI-Allenwood, White Deer, Pennsylvania, who is currently serving a federal sentence. According to the Board's records, Bailey was convicted of robbery, use of a firearm during crime, and possession of a firearm by a convicted felon at Indictment No. 93-00386-01 in the

United States District Court for the Eastern District of Pennsylvania. On March 10, 1994, he was sentenced to 11 years imprisonment. (See Attachment "A").

2. Prior to his federal conviction, Bailey was serving a period of state parole following convictions before the Courts of Common Pleas of Philadelphia and Bucks Counties in 1998. In Philadelphia County at Docket No. 2140, 785, petitioner was sentenced to serve a minimum term of no less than one year, six months to no more than five years imprisonment for robbery. For the Bucks County offense, #1979-1987, petitioner was sentenced to serve a minimum of no less than five years to a maximum term of no more than ten years for simple assault, possession of an instrument of crime, recklessly endangering another person, robbery, and theft. The Pennsylvania Department of Corrections determined petitioner's aggregate sentence of no less than 6 years, 6 months to no more than 15 years to have a minimum expiration date of December 23, 1992 and a maximum date of June 23, 2001. (See Attachment "B").

3. On December 1, 1992, the Board determined that petitioner should be paroled upon the expiration of his minimum sentence. (See Attachment "C").

4. Thereafter on December 25, 1992, petitioner was released from state prison and began serving his period of state parole. (See Attachment "D").

5. On June 1, 1993, while on state parole, petitioner was arrested by federal officials for his involvement in the robbery of a jewelry store in Philadelphia which resulted in his federal conviction as explained in paragraph 1 of this Answer.

6. Pursuant to Pennsylvania law, any state parolee, who during the period of his or her parole, commits any crime punishable by imprisonment, for which he is found guilty by a judge or jury or to which he pleads guilty or nolo contendere at any time thereafter in a court of record, may, at the discretion of the Board, be recommitted as a parole violator. See PA.STAT.ANN.tit. 61 §331.21a. As a result of his new federal conviction, the Board has lodged a detainer against petitioner with the Federal Bureau of Prisons. See 37 Pa.Code §71.1(e). Following completion of the federal sentence, the Board will determine whether Bailey should be recommitted to state prison as a convicted parole violator.

7. In his petition, Bailey contends that the Board's detainer should be quashed due to lack of jurisdiction. Specifically, he contends that the Board relinquished jurisdiction over him when it failed to hold a timely parole revocation hearing according to its rules. He does not allege that his incarceration is unlawful, however.

8. The Board acknowledges that it has adopted procedures for carrying out revocation hearing for inmates who have committed violations of state parole. Those

regulations are found in the Pennsylvania Code at Chapter 37 beginning with Section 71.1. Section 71.4 governs the procedures that shall be followed before a parolee is recommitted as a convicted violator for obtaining a new criminal conviction while on state parole. It is denied that any regulation has been violated.

9. Today, petitioner remains in custody of the Federal Bureau of Prisons. Only upon his release from federal custody will petitioner be available to state officials to conduct a revocation hearing. See Edwards v. PBPP, 751 A.2d 717, 719 (Pa.Cmwlth. 2000). The Board will then have 120 days to hold a revocation hearing for petitioner after his return to Pennsylvania's custody. See 37 Pa.Code §71.4(1)(i). The Board may lodge its detainer against petitioner, and commence parole revocation proceedings, upon petitioner's return to the Commonwealth after he has served his federal prison sentence. Edwards, supra. In light of the fact that petitioner is in federal custody, the Board is unable to conduct any revocation hearing at the present time. See Bellochio v. Pennsylvania Board of Probation and Parole, 559 A.2d 1024, 1026 (Pa. Cmwlth. 1989).

10. Relief pursuant to 28 U.S.C. §2241 is appropriate only where a prisoner is being held in violation of the Constitution or laws or treaties of the United States. There is no contention raised here that petitioner's custody violates any provision. Moreover, even if Pennsylvania has misapplied its administrative procedures (which

is has not), such violation does not mean that the procedures acquire a federal constitutional dimension. Slotnick v. Staviskey, 560 F.2d 31, 34 (1<sup>st</sup> Cir. 1977).<sup>1</sup>

WHEREFORE, the petition for writ of habeas corpus should be denied.

Respectfully submitted,

**D. MICHAEL FISHER**  
Attorney General

By: *Seth A. Mendelsohn*  
**SETH A. MENDELSON**  
Deputy Attorney General

**SUSAN J. FORNEY**  
Chief Deputy Attorney General  
Chief Litigation Section

**Office of Attorney General**  
**15<sup>th</sup> Floor, Strawberry Sq.**  
**Harrisburg, PA 17120**  
**Direct Dial: (717) 787-1194**  
**Fax: (717) 772-4526**  
**E-Mail: smendelsohn@attorneygeneral.gov**

**DATE: August 17, 2001**

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<sup>1</sup>The Board also suggests petitioner has failed to exhaust state judicial remedies prior to seeking federal review. To this extent, the Board believes the petition should be considered as one filed pursuant to 28 U.S.C. §2254 and not section 2241. Section 2241 for federal prisoners challenges the execution of an inmate's sentence. See Coady v. Vaughn, 251 F.3d 480, 485 (3d Cir. 2001). Bailey is not challenging the execution of his sentence. Therefore, petitioner was required to exhaust state remedies prior to seeking federal review. Id. at 488. There is no indication that petitioner has first attempted to raise these issues before the state courts of Pennsylvania. The petition should be dismissed for petitioner's failure to exhaust.

ATTACHMENT "A"

MAY 12 '94 16:13

FROM

TO 77722155

PAGE.002

COMMONWEALTH OF PENNSYLVANIA  
BOARD OF PROBATION AND PAROLE  
PBPP-257DR**DISPOSITION  
REPORT**☒ BOARD PAROLE  
☐ SP PROB/PAROLE  
☐ OTHER STATE PAROLE  
☐ OTHER STATE PROB

CLIENT NAME (Last, First, Middle Initial)

BAILEY, Yonnie

PAROLE NO.

7845-T

SID NO.

PP #594 974

INST &amp; NO.

SCIG #AS-0266

**COURT OF RECORD**

DATE OF ARREST 6/1/93	ARREST # 1	DATE OF ARREST	ARREST #	DATE OF ARREST	ARREST #
COUNTY/INDICTMENT NO./CHARGES U.S. District Court Eastern District of PA 93-00386-01 Robbery, Use of a Firearm Possession of a Firearm		COUNTY/INDICTMENT NO./CHARGES		COUNTY/INDICTMENT NO./CHARGES	
DATE BAIL POSTED N/A	DATE BAIL REVOKED	DATE BAIL POSTED	DATE BAIL REVOKED	DATE BAIL POSTED	DATE BAIL REVOKED
JUDGE Norman L. Shapiro		JUDGE		JUDGE	
VERDICT & DATE Guilty-9/7/93		VERDICT & DATE		VERDICT & DATE	
CONV. OFFENSE & SEVERITY Robbery; Use of a Firearm, Possession of a Firearm		CONV. OFFENSE & SEVERITY		CONV. OFFENSE & SEVERITY	
VERIFICATION DATE 4/7/94		VERIFICATION DATE		VERIFICATION DATE	
SENTENCE DATE 3/10/94		SENTENCE DATE		SENTENCE DATE	
EFFECTIVE SENTENCE DATE		EFFECTIVE SENTENCE DATE		EFFECTIVE SENTENCE DATE	
SENTENCE 11 Years		SENTENCE		SENTENCE	
INSTITUTION OF SENTENCE U.S. Penitentiary Lewisburg		INSTITUTION OF SENTENCE		INSTITUTION OF SENTENCE	

**DETAILS OF CONVICTION** (Include official version and circumstances of offense(s) which led to a conviction in a court of record and any plea bargain information - use attached sheet if necessary)

On 9/7/93, the above captioned individual appeared before the Honorable Norma L. Shapiro in U.S. District Court, for the Eastern District of Pennsylvania and pled guilty to a three count indictment, #93-00386-01, charging him with Interference With Commerce by Robbery, Use of a Firearm During a Crime of Violence, and Possession of a Firearm by a Convicted Felon.

Agent spoke to Mr. R. Largent, Interstate Serv. and he requested that case be forwarded to his office. Client is in Federal custody.

**RECOMMENDATION:** CONTINUE UNDER SUPERVISION ☐ RECOMMIT/REVOKE ☒ TECH. VIOLATION(S) CHARGED ☐ YES ☐ NO

REASON(S)

Due to the serious nature of the crime.

REVOCATION HEARING SCHEDULED YES ☐ NO ☐ OPEN CHARGES YES ☐ NO ☐

AGENT NAME/SIGNATURE/DATE

Larry Dorlety

SUPERVISOR NAME/SIGNATURE/DATE

C.E. Rich

OFFICE NAME:

PHILA. #01 rms

sub:4/26; typ:4/26/94

**ATTACHMENT "B"**



FORM DC-16D

## SENTENCE STATUS SUMMARY

COMMONWEALTH OF PENNSYLVANIA

DEPARTMENT OF CORRECTIONS

Replaces form JBC-16C which may be used

## 1. SENTENCE SUMMARY

Class of Sentence: <input type="checkbox"/> DEFINITE <input type="checkbox"/> INDEFINITE <input type="checkbox"/> GENERAL <input type="checkbox"/> LIFE <input type="checkbox"/> COMMUTED LIFE <input type="checkbox"/> EXECUTION												
Date	County	Number, Term Court, Indictment	Type Sent	Minimum			Maximum			Judge	Offense	Offense Tracking Number
01-15-88	BUCKS	1979-1987		Y	M	D	Y	M	D	M. KANE	S/ASSLT, PIC, REAP, ROBBERY, THEFT	B70443
6-30-88	Philadelphia	CP#2140, 7/85	CS	1	6		5			Paul Silverstein	Robbery	M23362
6-30-88	Philadelphia	CP#2139, 7/85	CC	1	6		5			Paul Silverstein	Consp.	
6-30-88	Philadelphia	CP#980, 1/87	CC	1	6		5			Paul Silverstein	Robbery	N/A
Continued From DC#		Plea	Total Sentence:	6	6		15			Commitment Credit		
		NOT GUILTY		5			10					
Fines			Costs			Restitution						
Summary or Remarks on Sentence												
CP#2137, 2138, 7/85 Nol. Pros. CP#981, 982, 983, 984, 1/87 Nol. Pros.												
SSN: 203-45-5610												

## #1979/2140 DATES SECTION

Item	Original	Change #1	Change #2	Change #3	Change #4	Change #5
DATE OF RECEPTION	01-19-88	1-19-88	1-19-88			
EFFECTIVE DATE	12-31-86	12-31-86	6-23-86			
EXPIRATION OF MINIMUM	12-31-91	6-30-93	12-23-92			
EXPIRATION OF MAXIMUM	12-31-96	12-31-2001	6-23-2001			
EFFECTIVE DATE - PV	X X X X X					
DELINQUENT TIME	X X X X X					
BACKTIME	X X X X X					
NEW MAXIMUM - PV	X X X X X					
SENTENCE CHANGE	X X X X X	7-1-88	2-18-92			
BASIS FOR CHANGE	X X X X X	Aggregated Sentence	Rec'd Added Comm. Time			
NEW SENTENCE	X X X X X	6½-15y				
1st Release Method—Inst.—Date	2nd Release: Method—Inst.—Date		3rd Release: Method—Inst.—Date		4th Release: Method—Inst.—Date	
4						

## 3. REFERENCES AND IDENTIFICATION

1st Admission: Inst.—Date SDIG1 01-19-88		2nd Admission: Inst.—Date SDIP5 01-22-88		3rd Admission: Inst.—Date SCIG 3-24-88		4th Admission: Inst.—Date	
Prosecuting Police Department MIDDLETOWN TWP.			Place of Birth PHILADELPHIA, PA.			Date of Birth 08-22-63	Marital Status SGL.
DC Number S-0266	PBPP Number	SID Number	Name BAILEY, YONNIE			<input type="checkbox"/> TN	<input type="checkbox"/> ALIAS

(OVER) JUAN DEVERO (TRUE NAME)

ATTACHMENT "C"

NOTICE OF BOARD DECISION  
BPP-15 (6/92)

**COMMONWEALTH OF PENNSYLVANIA  
PENNA. BOARD OF PROBATION AND PAROLE**

DATE: 121492

CLIENT NAME: YONNIE BAILEY

PAROLE NO: 7845T

INSTITUTION: STATE CORRECTIONAL INSTITUTION GRATERFORD

INSTITUTION NO: AS0266

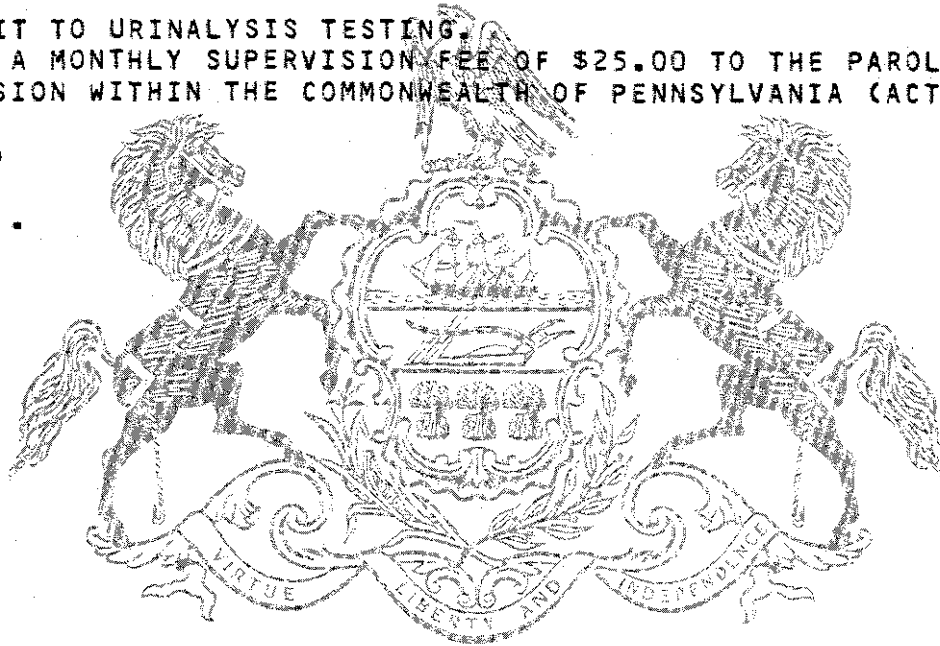
AS RECORDED ON 120192 THE BOARD OF PROBATION AND PAROLE RENDERED THE  
FOLLOWING DECISION IN YOUR CASE:

- PAROLE 12-23-92 TO AN APPROVED PLAN, UPON THE CONDITION THERE ARE NO MISCONDUCTS, ALL REQUIREMENTS OF ACT 97 OF 1989 ARE MET, AND REMAIN INVOLVED IN REQUIRED PROGRAMS.

YOU MUST SUBMIT TO URINALYSIS TESTING.  
YOU SHALL PAY A MONTHLY SUPERVISION FEE OF \$25.00 TO THE PAROLE BOARD WHEN UNDER SUPERVISION WITHIN THE COMMONWEALTH OF PENNSYLVANIA (ACT 35 OF 1991).

(MWS 12--4-92)

MAX. 6-23-2001.



CC: CONTROL COPY

*James W. Riggs*

JAMES W. RIGGS  
BOARD SECRETARY

FILE COPY

ATTACHMENT "D"

Pennsylvania Board of Probation and Parole  
PBPP-10(rev 3/88)

ORDER TO RELEASE ON PAROLE/REPAROLE

The Pennsylvania Board of Probation and Parole hereby grants parole/reparole to the prisoner named and on the sentences described below. It further ordered that he/she be released on the date indicated below, subject to Board approval of a satisfactory plan and to the Conditions Covering Parole/Reparole (PBPP-11) and upon condition that he/she commits no misconducts or crimes, and that no evidence of past crimes or mental illness, previously undiscovered, comes to light.

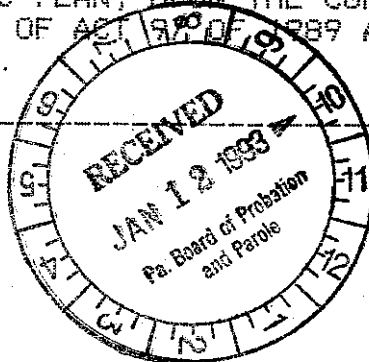
Name of Prisoner	ParNo.	Inst.No.	Authorized Date of Release
ONNIE BAILEY	7845T	AS0266	12-23-92 *

Place of Confinement	Date of Return (Reparole Cases Only)
STATE CORRECTIONAL INSTITUTION GRATERFORD	

County	Date of Sentence(s)	Tp Term(s)/Indictment Number(s)	OTN(s)	Offense(s)/Charge(s)
PHILAD	01/15/88	CC CP 870001979		S. ASLT;PIC;REAP
PHILAD				THEFT;ROBBERY
PHILAD	06/30/88	CS CP 850702140		ROBBERY
PHILAD	06/30/88	CC CP 870102139		CONSP.
PHILAD	06/30/88	CC CP 870100980		ROBBERY

Judge(s)	Term(s) of Sentence(s)	Expiration Dates Minimum Maximum
ALAN K. SILBERSTEIN MILDRED J. KANE	6YR 6MO 15YR	12/23/92 06/23/01

\* TO AN APPROVED PLAN, UPON THE CONDITION THERE ARE NO MISCONDUCTS, ALL REQUIREMENTS OF ACT 97 OF 1989 ARE MET, AND REMAIN INVOLVED IN REQUIRED PROGRAMS.



Signed this 14th day of December, 1992 at Harrisburg, PA

PENNSYLVANIA BOARD OF PROBATION AND PAROLE

*James W. Lewis*  
\_\_\_\_\_  
Board Chairman  
SEAL

SID 000000001

Actual Date of Release 12-25-92

Pennsylvania Board of Probation and Parole  
PBPP-11 (Rev. 7/91)

# CONDITIONS GOVERNING PAROLE/REPAROLE

To: Yonnie Bailey

Parole No. 7845T

1. Report in person or in writing within 48 hours to the district office or sub-office listed below, and do not leave that district without prior written permission of the parole supervision staff.  
Phila. District Office  
1400 Spring Garden Street 14th Floor  
Phila., Penna. 19130  
Report on 12-28-92 by 12:00 Noon
2. Your approved residence is listed below and may not be changed without the written permission of the parole supervision staff.  
1448 Etting Street  
Phila., Penna. 19121
3. Maintain regular contact with the parole supervision staff by:
  - a. reporting regularly as instructed and following any written instructions of the Board or the parole supervision staff.
  - b. notifying the parole supervision staff within 72 hours of: (1) your arrest; or (2) your receipt of a summons or citation for an offense punishable by imprisonment upon conviction; and
  - c. notifying the parole supervision staff within 72 hours of any change in status, including, but not limited to, employment, on-the-job training, and education.
4. Comply with all municipal, county, state and Federal criminal laws, as well as the provisions of the Vehicle Code (75 Pa. C.S. § 101 et seq.) and the Liquor Code (47 P.S. § 1-101 et seq.)
5. You shall:
  - a. abstain from the unlawful possession or sale of narcotics and dangerous drugs and abstain from the use of controlled substances within the meaning of the Controlled Substance, Drug, Device, and Cosmetic Act (35 P.S. § 780-101 et seq.) without a valid prescription;
  - b. refrain from owning or possessing any firearms or other weapons; and
  - c. refrain from any assaultive behavior.
6. You shall pay fines, costs, and restitution imposed on you by the sentencing court. You shall establish with appropriate county authorities within thirty (30) days of your release from prison a payment schedule for the fines, costs and restitution owed for those cases for which you are now on state parole. Thereafter, you shall:
  - a. pay these obligations according to the established payment schedule or as ordered by the court;
  - b. provide proof of such payment to parole supervision staff; and
  - c. keep the parole supervision staff and the court informed of any changes in your financial ability to pay fines, costs and restitution.
7. You shall comply with the special conditions listed on page 2 imposed by the Board and with special conditions imposed by the parole supervision staff.

Additionally, should problems arise, or questions occur concerning the conditions of your parole/reparole, consult with the parole supervision staff, and they will help you in the interpretation of the Conditions of Parole/Reparole.

If you are arrested on new criminal charges, the Board has the authority to lodge a detainer against you which will prevent your release from custody, pending disposition of those charges, even though you may have posted bail or been released on your own recognizance from those charges.

If you violate a condition of your parole/reparole and, after the appropriate hearing(s), the Board decides that you are in violation of a condition of your parole/reparole you may be recommitted to prison for such time as may be specified by the Board.

If you are convicted of a crime committed while on parole/reparole, the Board has the authority, after an appropriate hearing, to recommit you to serve the balance of the sentence or sentences which you were serving when paroled/reparoled, with no credit for time at liberty on parole.

If you think that any of your rights have been violated as a result of your parole supervision, you may submit a timely complaint in writing, first to the district director of the district office through which you are being supervised. If your complaint is not resolved to your satisfaction, you may then submit your complaint in writing to the Pennsylvania Board of Probation and Parole, Director of Supervision, P.O. Box 1661, Harrisburg, Pennsylvania 17105-1661.

In consideration of being granted the privilege of parole/reparole by the Pennsylvania Board of Probation and Parole, I hereby agree that:

If I am ever charged with a parole violation arising out of my conduct while in a jurisdiction other than the Commonwealth of Pennsylvania, the revocation of my parole for that violation may be based solely on documentary evidence and I hereby waive any right to confront or cross-examine any person who prepared any such documentary evidence or who supplied information used in its preparation;

I expressly waive extradition to the Commonwealth of Pennsylvania from any jurisdiction in or outside of the United States, where I may be found and I shall not contest any effort by any jurisdiction to return me to the United States or to the Commonwealth of Pennsylvania; and

I expressly consent to the search of my person, property and residence, without a warrant by agents of the Pennsylvania Board of Probation and Parole. Any items, in the possession of which constitutes a violation of parole/reparole shall be subject to seizure, and may be used as evidence in the parole revocation process.

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

YONNIE BAILEY,

Petitioner

v.

JAKE MENDEZ,

Respondent

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No. 1:CV-00-2184  
(Judge Caldwell)

CERTIFICATE OF SERVICE

I, Seth A. Mendelsohn, Deputy Attorney General, hereby certify that on this date I caused to be served the foregoing Answer of the Pennsylvania Board of Probation and Parole to Petition for Writ of Habeas Corpus, by depositing a copy of the same in the United States mail, postage prepaid, in Harrisburg, PA., addressed to the following:

Yonnie Bailey, #46949-066  
USP Allenwood  
White Deer, PA 17887

Matthew E. Haggerty  
Asst. U.S. Attorney  
228 Walnut St., Suite 220  
P. O. Box 11754  
Harrisburg, PA 17108-1754



SETH A. MENDELSON  
Deputy Attorney General

DATE: August 17, 2001